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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of the Appeal of the )  
Decision of the )  
Universal Service Administrator by )  
Greene County Schools )  
Federal-State Joint Board on )  
Universal Service )  
Changes to the Board of Directors of )  
The National Exchange Carrier )  
Association, Inc. )

File No. SLD -

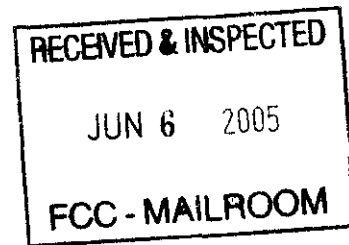
CC Docket No. 96 - 45

CC Docket No. 97 - 21

Appeal  
and  
Demand for Expedited Relief

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June 6, 2005



Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W. Suite TW-A325  
Washington, D.C. 20554

This is an appeal and request for expedited relief from a decision by the Schools and Libraries Division of the USAC to the Federal Communications Commission.

Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed; please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

**(1) Funding Commitment Decision Letter Appealed**

Form 471 Application Number:	421581
Funding Year 2004:	07/01/2004-06/30/2005
Billed Entity Number:	127380
Date of Funding Denial Notice:	May 24, 2005
Date of Appeal:	June 6, 2005

**(2) SLD Contact Information**

Max Anderson  
Technology Coordinator  
Greene County Schools  
(706) 453-3318  
201 N. Main St  
GREENSBORO, GA 30642

### (3) Funding Request Numbers Appealed

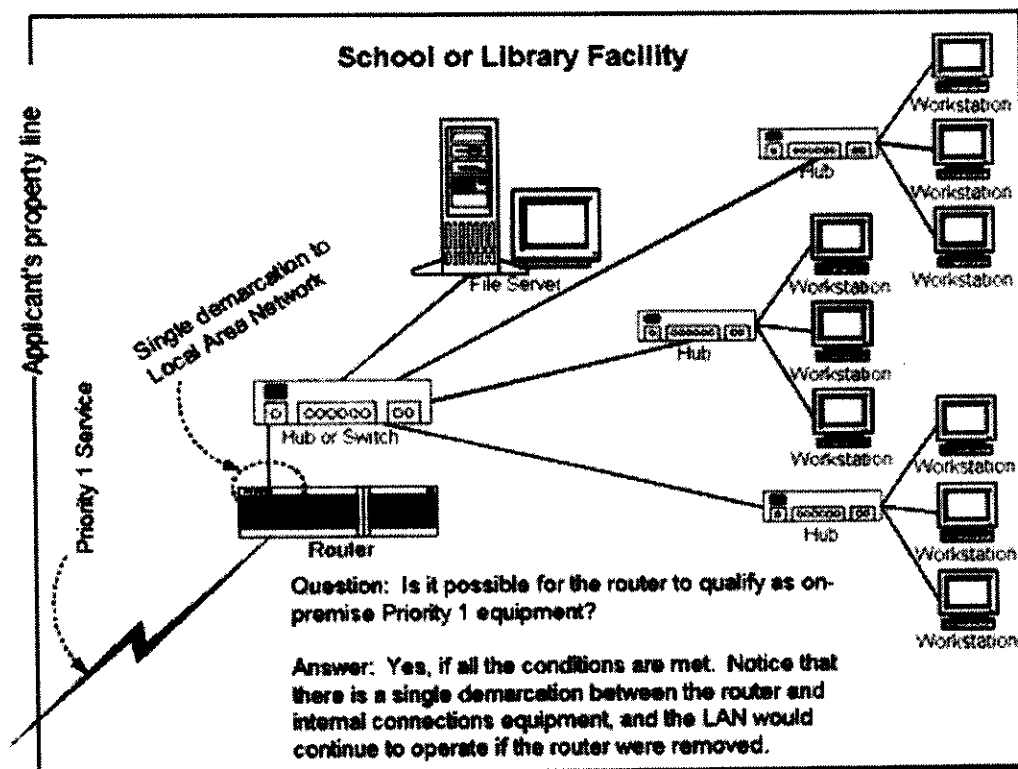
FRN – 1162422

### (4) The SLD stated that funding is denied because:

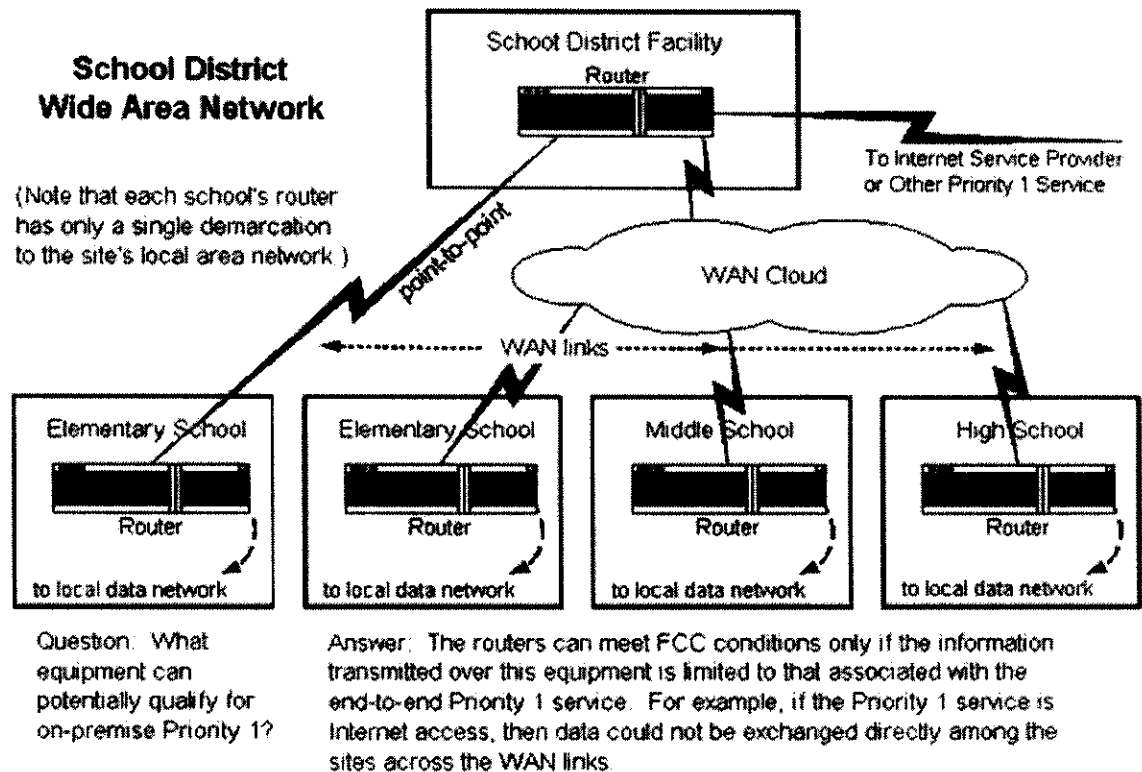
"The on-premise equipment does not meet the requirements of the Tennessee Order and is therefore considered to be Internal Connections."

### (5) The "Tennessee Order" was incorrectly applied by the SLD

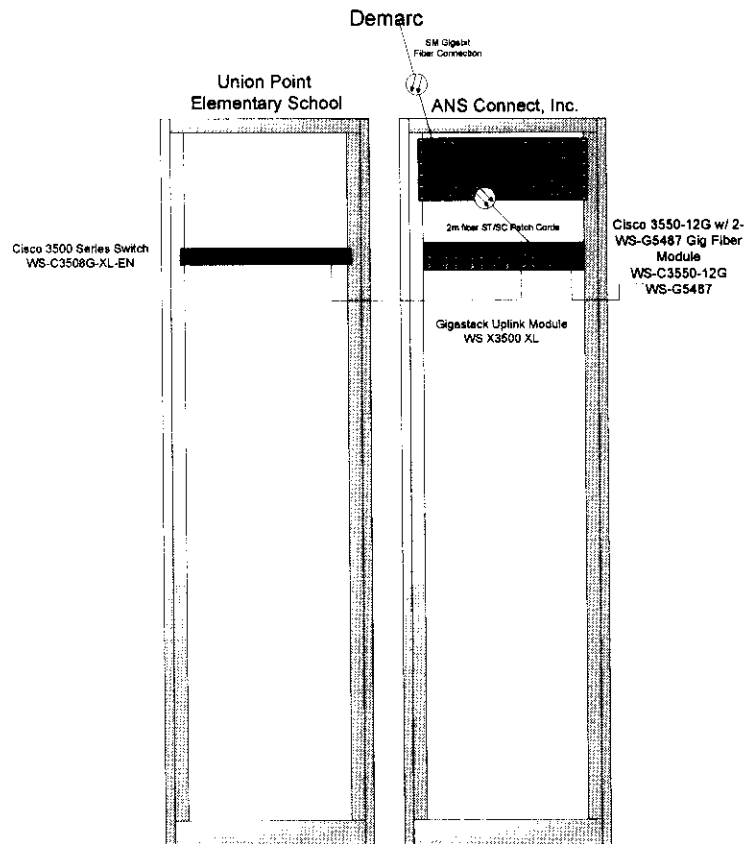
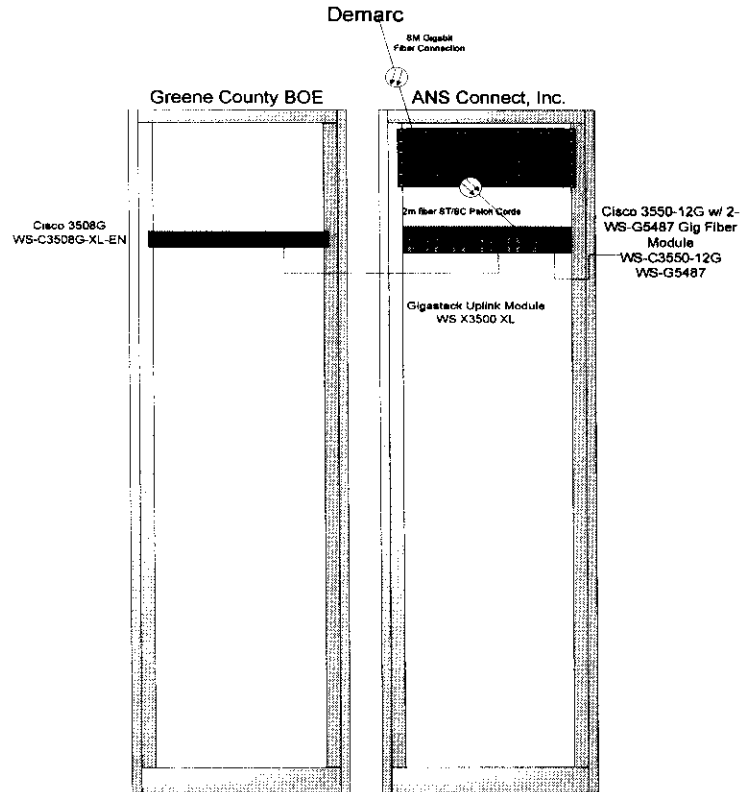
- a) Greene applied for Internet Access service, a Priority 1 Service. The basis for Greene's Application is the SLD website. The SLD's website uses the following illustration for eligible funding for Priority 1 Internet Access service:



b) And, the SLD illustration for eligible WAN funding provides:



c) The vendor, ANS Connect, provided diagrams of the Internet Access service that would be to Greene. Except for more detail, the vendor provided diagrams are identical to the SLD diagrams.



The "demarc" is shown clearly; it's between Greene on the "left", and the vendor on the "right", in both diagrams. Exhibit A.

- d) The SLD denied funding because (A) the vendor's on-premises equipment was allegedly owned by Greene, and thus Internal connections. The evidence provided to the SLD does not support the SLD's conclusion. The following response was sent to the SLD clearly stating that on premises equipment for Internet Access was owned by the vendor.

"October 25, 2004

Bill Kanyuck  
Associate Manager  
Schools and Libraries Division  
Program Integrity Assurance  
80 South Jefferson Road  
Whippany, New Jersey 07981  
973-884-8176 (phone)  
973-599-6521 (fax)

Dear Mr. Kanyuck:

Per your request the following is the response to your questions regarding FCC Form 471 Application #'s 421581.

**SLD Request: (Answers are immediately following the questions.)**

*Based on the documentation provided it appears that FRN 1162422 includes charges associated with the on-premise equipment. The FCC has indicated that equipment at the applicant site is presumed to be Internal Connections, but that this presumption can be overcome in certain circumstances. In order for us to evaluate your request, please provide the following information. You may consult*

*with your service provider for assistance, if desired. Please be sure to sign your response and list your title.*

*1.) Is the leased on-premise equipment an integral component of a Telecommunications or Internet Access service? **YES***

*2.) Will the leased on-premise equipment be provided by the same service provider that provides the associated Telecommunications Service or Internet Access service? **YES***

*3.) Does responsibility for maintaining the equipment rest with the service provider? **YES***

*4.) Will ownership of the equipment transfer to the school or library in the future? **NO***

*5.) Does the relevant contract or lease include an option for the applicant to purchase the equipment? **NO***

*6.) Will the leased equipment be used at the applicant site for any purpose other than receipt of the eligible Telecommunications Services or Internet Access of which it is a part? **NO***

*Please note that the following two questions are limited to data communications functionality, and do not include technologies limited to traditional voice communication.*

*7.) Will the school's or library's internal data communications network function without dependence on the equipment? **YES***

*8.) Are there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise data communications equipment in part for other customers? **NO***

Sincerely,

Max Anderson  
Greene County School District"

e) And, for authority, the Brooklyn Order<sup>1</sup> clearly states that:

9. ...

"SLD acknowledged that the Commission has recognized in the *Tennessee Order* that some infrastructure costs may be passed on as a component of service charges.

...

12. More specifically, as an initial matter, we reaffirm the principle set forth in the *Tennessee Order* that universal service funds may be used to fund equipment and infrastructure build-out associated with the provision of eligible services to eligible schools and libraries. We conclude, therefore, that our rules and Commission precedent do not bar eligible schools and libraries from seeking universal service funding for costs for infrastructure investment associated with the provision of telecommunications services, provided that: (1) the specific services and uses of those services are eligible for universal service funding; and (2) the costs for service to be provided over shared-use infrastructure are properly allocated so that the fund only pays for the costs associated with providing services to the eligible schools or libraries.<sup>34</sup> This conclusion, however, does not resolve the issue of how or in which manner the fund may pay for such infrastructure investment, given the facts before us.

## **Conclusion:**

## **Greene is Requesting the Following Action by the FCC:**

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<sup>1</sup> File No. SLD-149423, CC Docket No. 96-45, CC Docket No. 97-21, adopted, Sept 25; Rel. Sept 26, 2000



- (a) There is no violation of the Tennessee Order since all the equipment was vendor owned, and is used solely for the provision of Internet Access service.**
- (b) There is no evidence that Greene was purchasing a WAN. Indeed, there was never any intent to "purchase" a WAN.**
- (c) Within 30 days or less Order funding for the Internet Access services requested in the 471 Application, specifically FRN – 1162422**
- (d) Set aside funds to totally fund the Greene request.**

Respectfully submitted,

  
Nathaniel Hawthorne

Ohio Bar # 0008881  
Nathaniel Hawthorne,  
Attorney/Consultant, Ltd.  
27600 Chagrin Blvd., #265  
Cleveland, OH 44122  
tel.: 216/514.4798  
nhawthorne@earthlink.net

Attorney for  
Greene County Schools

Cc: Max Anderson

Greene County School  
District

Demarc

SM Gigabit  
Fiber Connection

Union Point  
Elementary School

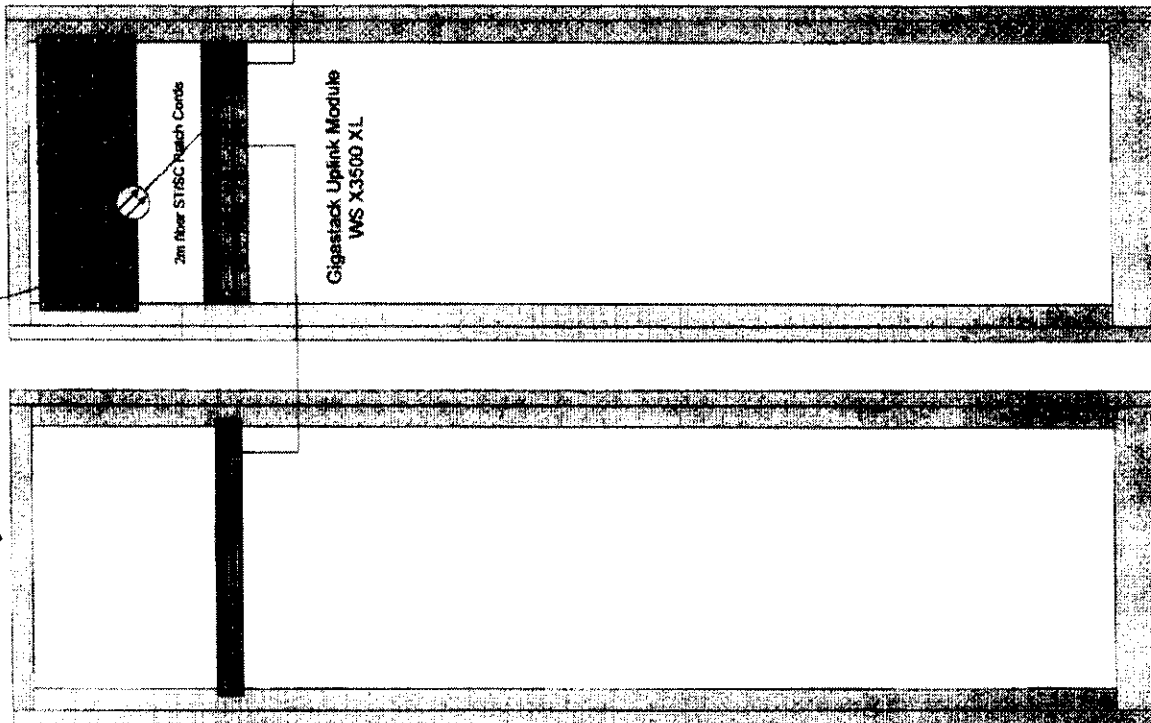
ANS Connect, Inc.

Cisco 3550-12G w/ 2-  
WS-G5487 Gig Fiber  
Module  
WS-C3550-12G  
WS-G5487

2m fiber ST/SC Patch Cords

Gigastack Uplink Module  
WS X3500 XL

Cisco 3500 Series Switch  
WS-C3500G-XL-EN



Demarc

SM Gigabit  
Fiber Connection



ANS Connect, Inc.

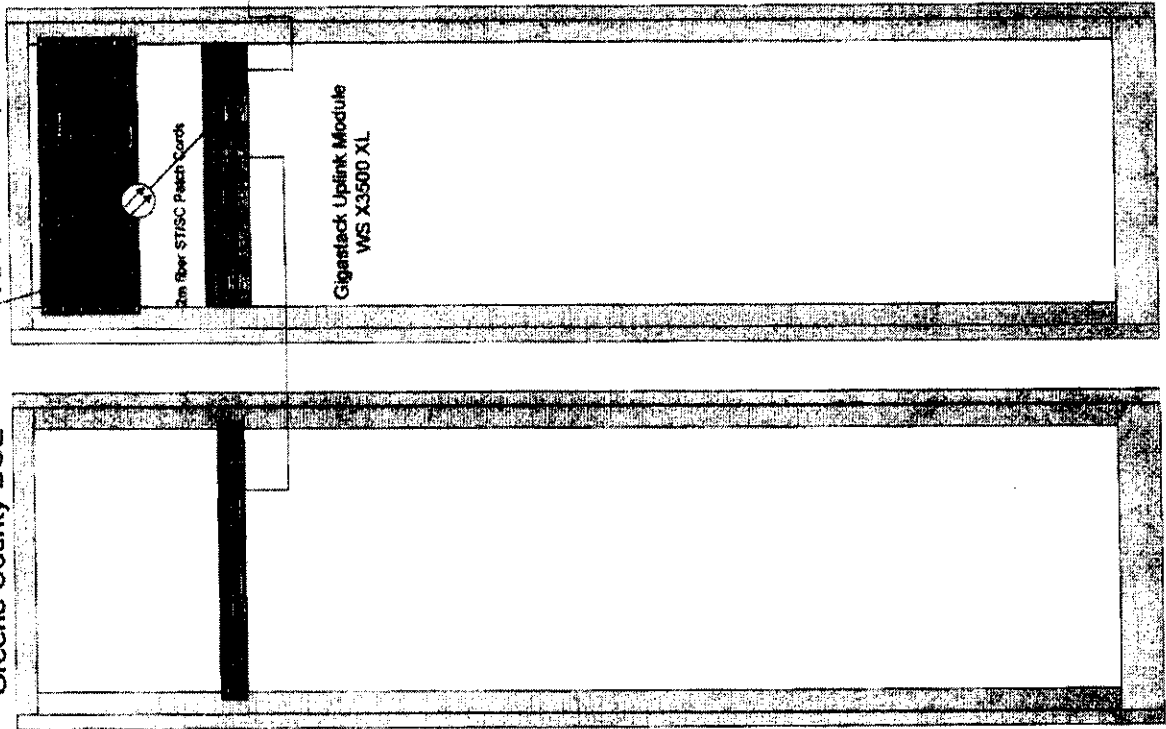
Cisco 3550-12G w/ 2-  
WS-G5487 Gig Fiber  
Module  
WS-C3550-12G  
WS-G5487

2m Fiber ST/SC Patch Cord

Gigastack Uplink Module  
WS X3500 XL

Greene County BOE

Cisco 3508G  
WS-C3508G-XL-EN



**[Greene County Letterhead]**

October 25, 2004

Bill Kanyuck  
Associate Manager  
Schools and Libraries Division  
Program Integrity Assurance  
80 South Jefferson Road  
Whippany, New Jersey 07981  
973-884-8176 (phone)  
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Sincerely,

Max Anderson  
Greene County School District